not to allow any answer to a question so improperly put to be given in evidence; but in some cases it may be proper or necessary to put questions to a person in custody after the caution has been administered. For instance, a person arrested for a burglary may, before he is formally charged, say: 'I have hidden or thrown property away', and after caution he would properly be asked: 'where have you hidden or thrown it?' or a person, before he is formally charged as a habitual criminal, is properly asked to give an account of what he has done since he last came out of prison. Rule 3 is intended to apply to such cases and, so understood, is not in conflict with and does not qualify rule 7, which prohibits any question upon a voluntary statement except such as is necessary to clear up ambiguity".

The important words particularly applicable to the appeal now before us are those underlined, which read :—

"Rule 3 is not intended to.... authorise the questioning.... of a person in custody after he has been cautioned on the subject of the crime for which he is in custody".

In *R. v. Treacy*[2] the appellant was under arrest upon a charge of murder. After he had been cautioned he was questioned by the police on the subject of that murder. At pages 225 and 226 the Court of Criminal Appeal said :—

"The fact was that the accused was detained upon a charge of murder, and whoever was the senior officer at that police station ought to have seen that, being under arrest upon a charge of murder, no question was put to that man about the murder....".

Following the explanation of the Judges in England regarding Rule 3 of the Judges' Rules, and also following that decided case, we hold in the appeal before us that the appellant, who was under arrest upon a charge of being in possession of ammunition, should not have been questioned about that charge.

Accordingly his statement was wrongly admitted in evidence. Apart from that statement there was no other evidence against the appellant.

This appeal is allowed and the conviction and sentence quashed.

Appeal Allowed.

ABDUL AZIZ BIN JAAFAR v. PUBLIC PROSECUTOR.

[App. Cr. Juris. (Willan, C.J., Laville and Spenser-Wilkinson, JJ.) June 2, 1949]

[F.M. — Cr. App. No. 54 of 1949]

Emergency Legislation, Regulations 4(1)(a), (b) and (c) and 4(2) — Police Informer — Protection of.

In this case the appellant who was a Police Informer was convicted of being in possession of 9 rounds of ammunition, an offence contrary to Regulation 4(1)(b) of the Emergency Regulations, 1948. The ammunition was found by the police in the house of the appellant on his own information. He was put under arrest and was interrogated by a Police Inspector for about 2 hours without having been cautioned under Regulation 33. Before searching the appellant's house the Police Inspector warned the appellant that if anything else was found in his house he would get into trouble. Nothing else was found. The learned trial Judge left the Assessors with the impression that the words "without lawful authority" in Regulation 4(1)(b) mean simply "without a licence".

Held, (1) that the words "without lawful authority" in Regulation 4(1)(b) do not mean simply "without a licence" because if the legislature had intended that, they would have used the word "licence", or a cognate expression, as they have done in Regulation 4(1)(a). The words "lawful authority" in Regulation 4(1)(b) are not restricted to carrying or possessing ammunition with a licence only; (2) that there must be some legal protection for police informers; otherwise a police informer, who is used in a 'police trap' to obtain possession of ammunition from a person regarding whom the informer gave information to the police that such person was in possession of ammunition, would have no protection. It would appear reasonable that a police informer can be regarded as in possession of such ammunition either by "lawful authority" under Regulation 4(1)(b), or by exemption from the Officer in charge of the Police District, for whom he is acting as a police informer, under Regulation 4(2). If this is not so the police informer would have no legal defence and would have to rely solely on the fact that no prosecution would be brought in such a case. The danger of relying on that is exactly brought out in the present case; (3) that where the accused is a police informer, that is a person acting for, and with the authority of, the police, the Court should consider whether that fact was sufficient lawful authority for him to be in possession of ammunition when it was not disputed that he had obtained it by means of his enquiries as a police informer.

CRIMINAL COURT OF APPEAL.

P. J. D. Regester for the Appellant.

A. M. I. Austin for the Respondent.

Willan, C. J. : — In this case the appellant was convicted of being in possession of 9 rounds of ammunition, an offence contrary to Regulation 4(1) (b) of the Emergency Regulations, 1948.

The facts are that a police corporal met the appellant on the 8th of February, 1949, in a Chinese drinking shop at a place called Nenasik on the east coast of Pahang. The police corporal admitted that for six months prior to that date he had known that the appellant was a police informer.

As soon as this meeting took place, the police corporal asked the appellant if he had any information, whereupon the appellant indicated that he had ammunition in his house. The police corporal accompanied the appellant to his house, and there the appellant took from a bag, hanging near the door of the house, a magazine containing 8 rounds of ammunition which he handed to the police corporal. The police corporal arrested him and took him to the police station at Pekan, about 23 miles distant. Prior to the appellant handing over the ammunition he had told the police corporal how he came to be in possession of it.

On arrival at the Pekan police station the appellant, without having been cautioned under Regulation 33 of the Emergency Regulations 1948, was interrogated by the police inspector for about 2 hours. After this interrogation the police inspector and a police sergeant took the appellant back to his house at Nenasik. Prior to setting out the police inspector warned the appellant that if anything else was found in his house he would get into trouble. Although the appellant at the time of this warning was under arrest — this was admitted by the police inspector — this warning could have been interpreted by the appellant that if no further ammunition was found in his house he would not get into trouble, not even as regards the 8 rounds already found there. On arrival at Nenasik the police inspector specifically told the police sergeant to search the appellant's house for ammunition. He, the police inspector. went to the house of a Chinese at Nenasik — the record is silent for what purpose — but we have no doubt it was for the purpose of searching that house for ammunition as a result of information given by the appellant during his interrogation. This must be so because in a statement made by the appellant a week after his arrest and after being cautioned — this statement was admitted in evidence at the trial — the appellant explained that he had obtained the 8 rounds of ammunition from a Malay who, in turn, had obtained them from a Chinese whose name the appellant gave.

The Chinese named by the appellant, and whose house was searched by the police inspector, was called as a witness and offered by the prosecution for cross-examination without giving any evidence. He was cross-examined as to whether he had given any ammunition to a Malay and, not unnaturally, denied it.

Turning now to the evidence of the police sergeant — on arrival at the house of the appellant the police sergeant, in the presence of the appellant, searched the same bag as the one in which the appellant had kept the magazine containing the 8 rounds of ammunition already mentioned, and in that bag found one more round of the same type of ammunition. The appellant was taken back to the police station at Pekan where he was kept in custody and, after one week i.e. on the 15th of February, 1949, on being cautioned by the police inspector under Regulation 33 of the Emergency Regulations 1948, made, as already mentioned, a statement which was admitted in evidence at his trial. With regard to the circumstances surrounding the making of this statement, the police inspector said he required a statement from the appellant to strengthen the case against him, and that he said to the appellant :—

> "You have already told me how you got it" — meaning the ammunition — "would you like to tell me again in detail?"

From an examination of that statement it is clear that the appellant, with regard to the 8 rounds of ammunition about which he gave information to the police and which he voluntarily surrendered to them, considered he was assisting the authorities in obtaining the ammunition from the Malay and surrendering it to the police. It is true he obtained that ammunition on the 1st January 1949, and did not surrender it to the police until the 8th February 1949, but it must be borne in mind that Nenasik, where he lived, was 23 miles away from Pekan where the police inspector (the Officer in charge of the Police District) was stationed, and that it was not until the latter date that the police corporal, who knew the appellant as a police informer, approached him in Nenasik for information which the appellant immediately gave. The prosecution at the trial sought to make much of the fact that there was a police post only one and a quarter miles from the house of the appellant and that he could have taken the ammunition there as soon as he obtained it on the 1st January 1949, instead of waiting to surrender it until the 8th February 1949. With regard to that we have no doubt that the appellant, as a police informer, wished to deal direct with the police staff of the Officer in charge of the Police District at Pekan in this matter, rather than with a policeman in charge of a small police post, because he would expect to obtain a reward from the Officer in charge of the Police District. This is borne out by the evidence of the police corporal that before going with the appellant to his house on the 8th February 1949, to get the ammunition he told the appellant he might get a reward.

The offences relating to carrying and possessing firearms and ammunition are contained in Regulation

4(1) of the Emergency Regulations 1948 which reads :—

> 4(1). Any person who carries or who has in his possession or under his control —
>
> (a) any firearm, not being a firearm which he is duly licensed to carry or possess under any other written law for the time being in force; or
>
> (b) any ammunition or explosives without lawful authority therefor,
>
> shall be guilty of an offence against these Regulations and shall on conviction be punished with death.

In his summing-up the learned trial Judge directed the Assessors, *inter alia* :—

> Now the third point the prosecution have to prove is that the accused has no lawful authority to possess such ammunition; and they have given you evidence that he certainly did not produce any licence that day or any time to possess the ammunition and you have also been told in evidence that he is in fact not licensed and that his name does not appear on the register and that he has not been exempted at all from this Regulation 4. He does not contend that he is licensed.

Therefore, apart from the question of exemption from liability contained in Regulation 4(2) which is dealt with later, the learned trial Judge left the Assessors with the impression that the words "without lawful authority" in Regulation 4(1) (b) mean simply "without a licence". We do not think that is a correct interpretation of the law. If the legislature had intended that, they would have used the word "licence", or a cognate expression, as they have done in Regulation 4(1) (a). In our view the words "lawful authority" in Regulation 4(1) (b) are not restricted to carrying or possessing ammunition with a licence only. The learned trial Judge should have considered whether the fact that the appellant was a police informer, i.e. a person acting for, and with the authority of, the police, was sufficient lawful authority for him to be in possession of ammunition which it was not disputed he had obtained by means of his inquiries as a police informer.

As regards the exemption contained in Regulation 4(2), the words applicable to this particular case are :—

> This Regulation shall not apply.....to any person exempted from the provisions of this Regulation by an Officer in charge of a Police District.

Although there is insufficient evidence on the record to support a finding that the appellant was exempted under that Regulation, there might have been sufficient evidence to support such a finding if this aspect of the case had been gone into fully. In our view this should have been done in view of the evidence of the Officer in charge of the Police District at Pekan that he warned the appellant that if any ammunition in his house, in addition to the 8 rounds concerning which the appellant had already given information to the police and had surrendered to them, the appellant would get into trouble. As stated earlier in these Grounds of Decision, the appellant could have interpreted that warning that if no further ammunition was found in his house he would not get into trouble.

That warning of the Officer in charge of the Police District at Pekan suggests that he, himself, considered that if no further ammunition was found the appellant was lawfully in possession of the 8 rounds already surrendered by the appellant to the police. They could be lawfully in the possession of the appellant, who had no licence, either under Regulation 4(1) (b), already discussed, or under the exemption contained in Regulation 4(2).

There must be some legal protection for police informers; otherwise a police informer, who is used in a 'police trap' to obtain possession of ammunition from a person regarding whom the informer gave information to the police that such person was in possession of ammunition, would have no protection. It would appear reasonable that a police informer can be regarded as in possession of such ammunition either by "lawful authority" under Regulation 4(1) (b), or by exemption from the Officer in charge of the Police District, for whom he is acting as a police informer, under Regulation 4(2). If this is not so the police informer would have no legal defence and would have to rely solely on the fact that no prosecution would be brought in such a case. The danger of relying on that is exactly brought out in the present case.

The learned trial Judge did not direct his mind to these matters as regards the 8 rounds of ammunition concerning which the appellant gave information to the police and which he voluntarily surrendered to them. We are unable to say that if he had done so, and directed the Assessors accordingly, they would have come to the same conclusion as to one they did.

With regard to the other round of ammunition, the only evidence of how it came into possession of the appellant is contained in his statement to the police inspector and is to the effect that he found it on the beach at Nenasik on the 7th of February 1949, and that he did not surrender it to the police because he was afraid he had committed an offence.

In our view the charge relating to this one round of ammunition should have been a separate charge because the facts relating to it are entirely different from those relating to the other 8 rounds. If that had been done, there could have been clear and distinct directions by the learned trial Judge to the Assessors relating to the evidence on each charge, and the Assessors would

have had to give their opinions separately on each charge. Since only one charge was brought relating to all the 9 rounds of ammunition that was not possible. That being so we cannot say what opinions the Assessors, properly directed, would have expressed on a separate charge relating to the eight rounds, and on a separate charge relating to the one round, of ammunition.

Mr. Regester, for the appellant, submitted that the appellant was protected by Section 76 or section 79, particularly the latter, of the Penal Code in that, by mistake of fact, he considered he was covered by the exemption in Regulation 4(2) to the same extent as a police officer. In the view we took of this case it was not necessary to go into this submission.

For these reasons we allowed this appeal and quashed the conviction and sentence. We do not consider this a proper case in which to direct a new trial.

Appeal Allowed.

LIEW CHING v. PUBLIC PROSECUTOR.

[App. Cr. Juris. (Willan, C.J., Spenser-Wilkinson and Russell, JJ.) June 4, 1949]
[F.M. — Cr. App. No. 57 of 1949]

Emergency Legislation, Regulations 4(1)(a) and 33(1) — Confession — Admissibility of.

In this case the Appellant was charged with carrying a firearm, a rifle, an offence contrary to Regulation 4(1)(a) of the Emergency Regulations, 1948. He was convicted and sentenced to death. Apart from a statement of the accused which was alleged to have been made at Bahau Police Station on the 18th March, 1949 there was no other evidence that the accused had carried a firearm on the day in question. The statement of the accused which was a confession was made to Assistant Superintendent Smith assisted by his chief clerk Tan Kian as his interpreter. The Appellant who is a Hakka spoke in his own dialect to Tan Kian who is a Hokkien and Mr. Smith took the statement down in English. This was marked Exhibit B. Present at the taking of the statement was a local Chinese shop-keeper, also a Hokkien, and he also at the request of the police took down the statement recording it in Chinese. This was Exhibit C. According to Exhibit B, the caution was administered to the Appellant, before he made the statement, in the correct statutory form; but, according to Exhibit C, the caution which was administered to the Appellant was not according to the statutory form.

Held, that as the caution was not according to statutory form the statement of the accused was inadmissible and should not have been admitted in evidence at the trial.

Case referred to :—

(1) *Poon Heong v. Public Prosecutor* (1949) M.L.J. 114.

CRIMINAL COURT OF APPEAL.

T. K. Sen for the Appellant.

F. G. Cooke (D. P. P.) for the Respondent.

Russell, J. : — The appellant in this case was charged with carrying a firearm, namely, a rifle, an offence contrary to Regulation 4(1) (a) of the Emergency Regulations, 1948. He was convicted and sentenced to death.

On the 29th of July, 1948, according to one Yap Siew Lean, who gave evidence for the prosecution, the appellant and eleven other Chinese, who were all in uniform and all armed with firearms went to a shop-house in Sungei Lui, Bahau, where Yap Siew Lean was living with her husband at about 7.45 p.m. Yap Siew Lean stated that the accused was carrying "a long gun" and picked out at the trial a .303 service rifle as being similar to the one carried by the accused.

She further stated that her husband Poh Teh Lai and another Chinese Tang Hong were led away with their hands tied by the accused and another member of the armed gang and that she later heard two shots. Later the same evening the dead bodies of Poh Teh Lai and Tang Hong were discovered a short distance away from the shop-house with gunshot wounds at the back of their heads.

On the 18th of March, 1949, Yap Siew Lean, who had known the appellant for about a year previous to the 29th of July, 1948, picked him out at a police identification parade. Apart from a statement of the accused which he was alleged to have made at Bahau Police Station on the 18th of March, 1949, at 9.30 a.m. there was no other evidence that the accused had carried a firearm on the day in question.

This statement which was a confession was made to Assistant Superintendent Smith assisted by his chief clerk Tan Kian as interpreter.

The appellant who is a Hakka spoke in his own dialect to Tan Kian who is a Hokkien and Mr. Smith took the statement down in English. (Exhibit B).

Present at the taking of the statement was a local Chinese shop-keeper, also a Hokkien, one Yap Seow Swee, and he also at the request of the police took down the statement recording it in Chinese. (Exhibit C).

At the trial the appellant gave evidence on his own behalf and retracted the confession describing it as an invention by the police and he further stated that anything he did say was said as a result of a severe beating by some unidentified Sikh policeman.

We rejected the allegations by the appellant that the police had invented any statement or that any member of the police force had beaten him.